

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Thomas Juliano	Team: Squad #13	CCRB Case #: 201902964	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Saturday, 03/30/2019 10:38 PM	Location of Incident: Front of § 87(2)(b)	Precinct: 67	18 Mo. SOL 9/30/2020	EO SOL 5/17/2021	
Date/Time CV Reported Sun, 03/31/2019 10:55 AM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Fri, 04/05/2019 11:15 AM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. POM Robert Gallagher	14960	957611	069 PCT
2. POM Michael Hawk	01338	960645	069 PCT
3. DTS Nicklas Yardan	7751	946577	069 PCT
4. SGT Terrence Howard	03375	950599	069 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Landrey Cherenfant	30846	946454	069 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Robert Gallagher	Abuse: Police Officer Robert Gallagher stopped § 87(2)(b)	§ 87(2)(b)
B.DTS Nicklas Yardan	Abuse: Detective Nicklas Yardan stopped § 87(2)(b)	§ 87(2)(b)
C.POM Michael Hawk	Abuse: Police Officer Michael Hawk stopped § 87(2)(b)	§ 87(2)(b)
D.POM Robert Gallagher	Abuse: Police Officer Robert Gallagher stopped § 87(2)(b)	§ 87(2)(b)
E.DTS Nicklas Yardan	Abuse: Detective Nicklas Yardan stopped § 87(2)(b)	§ 87(2)(b)
F.POM Michael Hawk	Abuse: Police Officer Michael Hawk stopped § 87(2)(b)	§ 87(2)(b)
G.POM Robert Gallagher	Abuse: Police Officer Robert Gallagher frisked § 87(2)(b)	§ 87(2)(b)
H.POM Robert Gallagher	Abuse: Police Officer Robert Gallagher searched § 87(2)(b)	§ 87(2)(b)
I.POM Michael Hawk	Abuse: Police Officer Michael Hawk frisked § 87(2)(b)	§ 87(2)(b)
J.POM Michael Hawk	Abuse: Police Officer Michael Hawk searched § 87(2)(b)	§ 87(2)(b)
K.DTS Nicklas Yardan	Abuse: Detective Nicklas Yardan searched the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants.	§ 87(2)(b)
L.DTS Nicklas Yardan	Abuse: Detective Nicklas Yardan searched § 87(2)(b)	§ 87(2)(b)
M.SGT Terrence Howard	Abuse: Sergeant Terrence Howard searched § 87(2)(b)	§ 87(2)(b)

[illegible]

Case Summary

On March 31, 2019, § 87(2)(b) filed this complaint over the phone with IAB on behalf of herself and her boyfriend, § 87(2)(b). On April 4, 2019, the CCRB received the complaint via log #19-12946.

On March 30, 2019, at approximately 10:38 p.m., § 87(2)(b) and § 87(2)(b) were sitting inside of § 87(2)(b)'s vehicle, parked in front of § 87(2)(b)'s driveway of his home, located at § 87(2)(b) in Brooklyn. PO Robert Gallagher, PO Michael Hawk, and Det. Nicklas Yardan of the 69th Precinct stopped § 87(2)(b) and § 87(2)(b) (**Allegations A, B, C, D, E, and F: Abuse of Authority** – § 87(2)(g)). PO Gallagher frisked and searched § 87(2)(b) (**Allegations G and H: Abuse of Authority** – § 87(2)(g)). PO Hawk frisked and searched § 87(2)(b) (**Allegation I and J: Abuse of Authority** – § 87(2)(g)). Det. Yardan searched § 87(2)(b)'s vehicle (**Allegation K: Abuse of Authority** – § 87(2)(g)). Det. Yardan and Sgt. Terrance Howard of the 69th Precinct searched § 87(2)(b) (**Allegations L and M: Abuse of Authority** – § 87(2)(g)). PO Hawk searched § 87(2)(b)'s vehicle and § 87(2)(b)'s purse (**Allegations N and O: Abuse of Authority** – § 87(2)(g)). Det. Yardan refused to provide his name to § 87(2)(b) (**Allegation P: Abuse of Authority** – § 87(2)(g)).

PO Gallagher failed to offer a business card to § 87(2)(b) and § 87(2)(b) (**Allegations Q and R: Abuse of Authority** – § 87(2)(g)). PO Hawk and Det. Yardan failed to offer business cards to § 87(2)(b) and § 87(2)(b) (**Allegations S, T, U, and V: Abuse of Authority** – § 87(2)(g)). Sgt. Howard failed to offer a business card to § 87(2)(b) (**Allegation W: Abuse of Authority** – § 87(2)(g), § 87(2)(g), § 87(4-b)).

No arrests or summonses resulted from this incident.

There is no video evidence in this case.

Findings and Recommendations

Allegation A – Abuse of Authority: Police Officer Robert Gallagher stopped § 87(2)(b)
Allegation B – Abuse of Authority: Detective Nicklas Yardan stopped § 87(2)(b)
Allegation C – Abuse of Authority: Police Officer Michael Hawk stopped § 87(2)(b)
Allegation D – Abuse of Authority: Police Officer Robert Gallagher stopped § 87(2)(b)
Allegation E – Abuse of Authority: Detective Nicklas Yardan stopped § 87(2)(b)
Allegation F – Abuse of Authority: Police Officer Michael Hawk stopped § 87(2)(b)
§ 87(2)(b) and § 87(2)(b) both alleged that § 87(2)(b)'s vehicle was parked in front of § 87(2)(b)'s driveway when the officers stopped their police car next to § 87(2)(b)'s vehicle, exited their police car, and approached § 87(2)(b)'s vehicle with their flashlights turned on. PO Gallagher ordered § 87(2)(b) to produce his license and registration, which § 87(2)(b) provided immediately (**Board Review 01, 02**).

PO Gallagher, PO Hawk, Det. Yardan, and Sgt. Howard all said § 87(2)(b)'s vehicle was parked in the lane of traffic which was a violation. As they attempted to drive by, they smelled marijuana coming from the vehicle (See Allegations D-M below). PO Gallagher and PO Hawk both said § 87(2)(b)'s vehicle was also blocking a driveway. Det. Yardan did not recall if § 87(2)(b)'s vehicle was blocking a driveway. PO Gallagher wanted to inquire as to whether the driveway belonged to § 87(2)(b) (**Board Review 03, 04, 05, 06**).

NYC Department of Transportation Traffic Rules and Regulations, Section 4-08 states that no person shall park in front of a public or private driveway, except that it shall be permissible for the owner, lessor, or leese of the lot accessed by a private driveway to park a passenger vehicle registered to him/her at that address in front of such driveway (**Board Review 07**).

§ 87(2)(g)

Allegation G – Abuse of Authority: Police Officer Robert Gallagher frisked § 87(2)(b)

Allegation H – Abuse of Authority: Police Officer Robert Gallagher searched § 87(2)(b)

Allegation I – Abuse of Authority: Police Officer Michael Hawk frisked § 87(2)(b)

Allegation J – Abuse of Authority: Police Officer Michael Hawk searched § 87(2)(b)

Allegation K – Abuse of Authority: Detective Nicklas Yardan searched the vehicle in which

§ 87(2)(b) and § 87(2)(b) were occupants.

Allegation L – Abuse of Authority: Detective Nicklas Yardan searched § 87(2)(b)

Allegation M – Abuse of Authority: Sergeant Terrence Howard searched § 87(2)(b)

Allegation N – Abuse of Authority: Police Officer Michael Hawk searched the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants.

Allegation O – Abuse of Authority: Police Officer Michael Hawk searched § 87(2)(b)

§ 87(2)(b) and § 87(2)(b) both said at some point after ordering § 87(2)(b) to produce his identification, PO Gallagher told them that he observed “weed sprayed all around the car.” Both § 87(2)(b) and § 87(2)(b) denied having marijuana or smoking marijuana inside of the vehicle. Neither § 87(2)(b) nor § 87(2)(b) specified if they had smoked marijuana at any point during the day or if their clothes smelled. § 87(2)(b) and § 87(2)(b) were uncooperative with subsequent contact attempts to obtain additional information about this aspect of the incident (See IAs for contact attempts.

§ 87(2)(b) testified that PO Gallagher ordered § 87(2)(b) to step out of the vehicle and he complied. PO Gallagher patted § 87(2)(b) down along the front and side of his torso, his jacket pockets, front and rear pants pockets, and down his legs. PO Gallagher removed § 87(2)(b)'s wallet from one of the rear pockets of § 87(2)(b)'s pants. PO Gallagher escorted § 87(2)(b) to the rear of the vehicle. PO Hawk ordered § 87(2)(b) to step out of the vehicle. § 87(2)(b) heard § 87(2)(b) scream “stop,” and “don’t touch me,” but could not see what was happening as PO Hawk and § 87(2)(b) were on the other side of the vehicle.

§ 87(2)(b) testified that PO Hawk ordered her to exit the vehicle and she complied. PO Hawk patted § 87(2)(b)'s right jacket pocket. He reached his hand into her right jacket pocket, and through the pocket, patted down her groin area, over her pants. § 87(2)(b) screamed that was not her pocket, and that he was touching her “private area.” Det. Yardan and another officer, identified by the investigation as Sgt. Howard, approached § 87(2)(b) and turned out her jacket pockets. The only item contained in § 87(2)(b)'s jacket pockets were her keys. Det. Yardan told § 87(2)(b) that because she was shaking, they suspected her of possessing a firearm. § 87(2)(b) did not see PO Gallagher frisk or search § 87(2)(b).

§ 87(2)(b) testified that after § 87(2)(b) exited the car, Det. Yardan entered the car. § 87(2)(b) could not see specifically where Det. Yardan searched the vehicle, but observed his

flashlight moving around the vehicle, both in the front and in the rear of the vehicle. Det. Yardan was inside of the vehicle for approximately two minutes. § 87(2)(b) did not recall § 87(2)(b)'s vehicle being searched and believed that the officers only peered inside of it from outside.

PO Gallagher, PO Hawk, and Det. Yardan all said that as they attempted to drive by § 87(2)(b)'s vehicle, they smelled an odor of marijuana coming from the vehicle. While PO Gallagher was standing near the driver's window speaking with § 87(2)(b) and while PO Hawk was walking to the passenger side of the vehicle, both officers observed remnants of marijuana, specifically small, green pieces that appeared to have fallen out of a marijuana cigarette or pipe as it was being prepared, "scattered" in the front center console of the car near the gear shifter. PO Hawk also said he observed a marijuana cigarette in the cup holder. Det. Yardan did not recall if any marijuana was found inside of the vehicle.

PO Gallagher testified that he ordered § 87(2)(b) to step out of the vehicle and frisked him for weapons. He did not observe any specific bulges that he was concerned about, but stated that he always conducts frisks whenever he asks someone to step out of a vehicle. PO Gallagher denied entering § 87(2)(b)'s pockets.

PO Hawk testified that once § 87(2)(b) was out of the vehicle, she kept one of her hands inside of her jacket pocket. PO Hawk did not observe any specific bulges that concerned him; however, § 87(2)(b)'s jacket was large and fell past her knees, which prevented him from seeing any potential bulges. PO Hawk frisked § 87(2)(b)'s jacket, around her waist, and her jacket pocket where her hand was and felt that her hand was clenched. § 87(2)(b) pulled away and told PO Hawk not to touch her. PO Hawk ordered her to remove her hand from her pocket and she refused. § 87(2)(b)'s refusal to remove her hand from her pocket made PO Hawk fear that she may have been concealing a firearm. Sgt. Howard, who had been driving behind the officers in a separate car to get food with them, had been sitting in his car up until this point. PO Hawk called Det. Yardan and Sgt. Howard over for assistance. As Sgt. Howard and Det. Yardan spoke to § 87(2)(b) PO Hawk walked away from § 87(2)(b). Either Sgt. Howard or Det. Yardan convinced § 87(2)(b) to remove her hand from her pocket, and PO Hawk observed loose marijuana in her hand.

PO Gallagher denied entering § 87(2)(b)'s pockets and did not observe any officers reach inside of § 87(2)(b)'s pockets. Sgt. Howard and PO Hawk did not reach inside of § 87(2)(b)'s or § 87(2)(b)'s pockets nor did they see any other officer do so. Det. Yardan did not recall if § 87(2)(b)'s or § 87(2)(b)'s pockets were searched.

After PO Hawk observed the marijuana inside of § 87(2)(b)'s pocket, he entered § 87(2)(b)'s vehicle and searched § 87(2)(b)'s purse, which contained additional marijuana. PO Hawk examined the loose marijuana spread around the gear shift area of the vehicle and observed marijuana joints in the cup holder. This was the extent of PO Hawk's search of § 87(2)(b)'s vehicle. He did not believe any other officer searched the vehicle. PO Gallagher did not testify to PO Hawk searching § 87(2)(b)'s vehicle (The civilians did not allege that PO Hawk searched the vehicle, and PO Gallagher was interviewed prior to PO Hawk acknowledging doing so). PO Gallagher testified that Det. Yardan searched § 87(2)(b)'s vehicle through the driver's door and did not recall if he went through any other doors. Det. Yardan recovered one or two small bags of marijuana from the cup holders. Det. Yardan denied searching § 87(2)(b)'s vehicle. Sgt. Howard did not see the vehicle be searched.

PO Gallagher, Det. Yardan, PO Hawk, and Sgt. Howard all said they used their discretion and decided not confiscate the marijuana, issue any summonses, or make any arrests pursuant to this incident.

§ 87(2)(g)

Allegation P – Abuse of Authority: Detective Nicklas Yardan refused to provide his name to

§ 87(2)(b)

§ 87(2)(b) alleged that after Det. Yardan searched his vehicle, he approached § 87(2)(b) and told him that there was marijuana “sprayed all over the car.” § 87(2)(b) asked for Det. Yardan’s name. Det. Yardan did not acknowledge § 87(2)(b)’s question. § 87(2)(b) did not allege mention § 87(2)(b) requesting Det. Yardan’s name.

Det. Yardan and PO Gallagher could not recall if § 87(2)(b) requested Det. Yardan’s name, nor did they recall Det. Yardan providing his name to § 87(2)(b). PO Hawk did not hear § 87(2)(b) request Det. Yardan’s name nor did he recall Det. Yardan providing his name to § 87(2)(b). Sgt. Howard denied that § 87(2)(b) requested Det. Yardan’s name and he did not hear Det. Yardan provide his name to § 87(2)(b).

§ 87(2)(g)

Allegation Q – Abuse of Authority: Police Officer Robert Gallagher failed to provide § 87(2)(b) with a business card.

Allegation R – Abuse of Authority: Police Officer Robert Gallagher failed to provide § 87(2)(b) with a business card.

Allegation S – Abuse of Authority: Police Officer Michael Hawk failed to provide § 87(2)(b) with a business card.

Allegation T – Abuse of Authority: Police Officer Michael Hawk failed to provide § 87(2)(b) with a business card.

Allegation U – Abuse of Authority: Detective Nicklas Yardan failed to provide § 87(2)(b) with a business card.

Allegation V – Abuse of Authority: Detective Nicklas Yardan failed to provide § 87(2)(b) with a business card.

Allegation W – Abuse of Authority: Sergeant Terrence Howard failed to provide § 87(2)(b) with a business card.

§ 87(2)(b) and § 87(2)(b) both alleged that none of the officers offered them business cards. (The investigation determined that Sgt. Howard arrived to the location after PO Gallagher, Det. Yardan, and PO Hawk stopped § 87(2)(b) and after PO Gallagher frisked and allegedly searched

§ 87(2)(b) § 87(2)(g)

Det. Gallagher said he forgot to provide § 87(2)(b) and § 87(2)(b) with business cards. PO Gallagher had his business cards on him, but forgot to provide them. PO Gallagher did not recall if any other officer did so. Det. Yardan and PO Hawk did not recall if they or any officers offered business cards to § 87(2)(b) or § 87(2)(b).

Sgt. Howard said he offered § 87(2)(b) a business card and she refused it. He did not offer one to § 87(2)(b) as he arrived after the vehicle was stopped to calm § 87(2)(b) down, and did not have any interaction with § 87(2)(b). Sgt. Howard did not know if PO Gallagher, PO Hawk, or Det. Yardan offered § 87(2)(b) and § 87(2)(b) business cards, but stated that he left the location before the other officers left.

NYC Administrative Code, Section 14-174 states that officers are required to provide members of the public with business cards after law enforcement encounters, including stops, frisks, and vehicle searches, in which no summons is issued or arrest is made (**Board Review 08**).

§ 87(2)(g)
[Redacted text block]

§ 87(2)(g)
[Redacted text block]

§ 87(2)(g), § 87(4-b)
[Redacted text block]

[Redacted text block]

[Redacted text block]

[Redacted text block]

§ 87(2)(g), § 87(4-b)

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Civilian and Officer CCRB Histories

- This is the first CCRB complaint to which § 87(2)(b) and § 87(2)(b) have been a party (**Board Review 15**).
- PO Gallagher has been a member-of-service for four years and has been a subject in seven additional CCRB complaints and 18 allegations, one of which was substantiated. § 87(2)(g)
[REDACTED]
 - 201807315 involved a substantiated allegation of Discourtesy - Word. The Board recommended command level instructions and the NYPD has not yet imposed discipline.
- Det. Yardan has been a member-of-service for 11 years and has been a subject in 14 additional CCRB complaints, and 34 allegations, none of which have been substantiated. § 87(2)(g)
[REDACTED]

- PO Hawk has been a member-of-service for three years and has been a subject in five additional CCRB complaints, and 13 allegations, none of which have been substantiated. § 87(2)(g)
- Sgt. Howard has been a member-of-service for eight years and has been a subject in nine additional CCRB complaints, and 13 allegations, none of which have been substantiated. § 87(2)(g)

Mediation, Civil and Criminal Histories

- § 87(2)(b) declined to mediate this complaint.
- As of August 2, 2019, the New York City Office of the Comptroller has no record of a Notice of Claim being filed in regards this to incident (**Board Review 16**).
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Squad No.: 13

Investigator: _____
 Signature Print Title & Name Date

Squad Leader: _____
 Signature Print Title & Name Date